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EXAMINER	
GELLNER, JEFFREY L	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Office Action Summary	**Application No.** 10/686,241	**Applicant(s)** KRYSIAK ET AL.	
	Examiner Jeffrey L. Gellner	**Art Unit** 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-22 and 25-62* is/are pending in the application.

4a) Of the above claim(s) *26 and 27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-22,25 and 28-62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-14, 16, 17-19, 25, 28-60, and 62 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hamilton Jr. (US 5,456,733; 6th document listed on Applicant's 1449) in view of Green et al. (Sustaining the Global Farm).

As to claims 1, 7, 16, 17, 25, and 62, Hamilton Jr. discloses a method of applying a material to the soil (from col. 4 lines 32-41 and col. 5 lines 43-46) comprising adding the material to the solid carrier (from col. 5 lines 43-46) that are pellets and a fibrous material (col. 4 lines 5-42; col. 5 lines 53-46); applying the soil carrier to the soil (from col. 4 lines 35-41); applying water to the solid carrier (from "when wetted" of col. 4 lines 32-41); releasing the material out of the carrier and into the soil (from "disintegrate when wetted" of col. 4 lines 32-41); wherein the soil carrier is made by an agglomeration process, pressure (from "water is extruded and lost during pelletization" of col. 4 lines 14-17); wherein application rates of the solid carrier to the soil is based on the desired amount of material to be metered to the soil (from "uniform incorporation of small of small amounts of powdered water-absorbing, gel-forming polymers" of col. 4 lines 32-41). Not disclosed is the material being a soil stabilizer. Green et al., however, discloses applying a soil stabilizer, anionic PAM, to the soil (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Hamilton Jr. by using PAM as the agent as disclosed by Green et al. so as to stabilize soil aggregation and flocculate suspended particles (see abstract of Green et al.) so as to stop erosion.

As to claim 3, Hamilton Jr. as modified by Green et al. further disclose the carrier applied by a spreader (from "spread or broadcast" of col. 4 lines 32-41 of Hamilton Jr.).

As to claims 4 and 5, Hamilton Jr. as modified by Green et al. further disclose further disclose rain (from "when wetted" of col. 4 lines 32-41 of Hamilton Jr.) and irrigation (from "irrigated" of col. 4 lines 32-41 of Hamilton Jr.).

As to claim 6, Hamilton Jr. as modified by Green et al. further disclose adding fertilizer to the carrier (col. 3 lines 34-43 of Hamilton Jr.).

As to claim 8, Hamilton Jr. as modified by Green et al. further disclose adding seed (col. 3 lines 34-43 of Hamilton Jr.).

As to claim 9, the limitations of claim 1 are disclosed as described above. Not disclosed is adding a herbicide. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Hamilton Jr. as modified by Green et al. by adding a pesticide depending desired use of the mulch.

As to claim 11, the limitations of claim 1 are disclosed as described above. Not disclosed is the stabilizer of the total weight being less than 50%. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Hamilton Jr. as modified Green et al. by having the stabilizer of the total weight being less than 50% depending upon use of the composition.

As to claim 12, Hamilton Jr. as modified Green et al. further disclose a extruded pellet (Hamilton Jr. at col. 3 lines 5-22).

As to claim 13, Hamilton Jr. as modified Green et al. further disclose the carrier a fertilizer (from "clay" of Hamilton Jr. at col. 4 lines 1-3).

As to Claim 14, Hamilton Jr. as modified by Green et al. further disclose adding a disease causing microbe to a solid carrier (within the ambit of "other optional additives" of col. 3 lines 35-43 of Hamilton Jr.). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Hamilton Jr. as modified by Green et al. by adding a disease causing microbe to the carrier as disclosed by Hamilton Jr. depending upon use of the carrier.

As to claims 18 and 19, Hamilton Jr. as modified by Green et al. further disclose a solid carrier being a material from paper manufacturing ("newsprint" of col. 3 lines 26-33) with a previous treated ingredient that has soil stabilizing properties ("binder material" of col. 3 lines 26-33).

As to claims 28-57, Hamilton Jr. as modified Green et al. further disclose these limitations as inherent when PAM is added to the soil.

As to claim 10, Hamilton Jr. discloses a method of applying an agent to the soil (from col. 4 lines 35-41 and col. 5 lines 43-46) comprising adding the agent to the solid carrier (from col. 5 lines 43-46) that are pellets (col. 4 lines 5-42); applying the soil carrier to the soil (from col. 4 lines 35-41); applying water to the solid carrier (from "when wetted" of col. 4 lines 35-41); releasing the agent out of the carrier and into the soil (from "release water" of col. 4 lines 35-41);

wherein application rates of the solid carrier to the soil is based on the desired amount of agent to be metered to the soil (from "to release any included nutrients" from abstract in that mulch application would monitored for amount of nutrient needed or applied); the soil carrier is an agglomerate (inherent in "pelletization" of col. 4 lines 14-18; extrusion is a pressure agglomeration, see for example US 4,123,489 at col. 9 lines 3-8). Not disclosed is the soil agent being a soil stabilizer. Green et al., however, discloses applying a soil stabilizer, PAM, to the soil (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Hamilton Jr. by using PAM as the agent as disclosed by Green et al. so as to stabilize soil aggregation and flocculate suspended particles (see abstract of Green et al.) so as to stop erosion.

As to claims 58-60, Hamilton Jr. discloses a method of improving soil penetration, reducing soil erosion, and reducing fertilizer runoff (generally from col. 2 lines 29-43) comprising applying a material by convention application (from "spread or broadcast" of col. 4 lines 32-41) to the soil (from col. 4 lines 32-41 and col. 5 lines 43-46) comprising adding the material to the solid carrier (from col. 5 lines 43-46) that are pellets (col. 4 lines 5-42; col. 5 lines 53-46); applying the soil carrier to the soil (from col. 4 lines 35-41); applying water to the solid carrier (from "when wetted" of col. 4 lines 32-41); releasing the material out of the carrier and into the soil (from "disintegrate when wetted" of col. 4 lines 32-41); wherein the soil carrier is made by an agglomeration process, pressure (from "water is extruded and lost during pelletization" of col. 4 lines 14-17); wherein application rates of the solid carrier to the soil is based on the desired amount of material to be metered to the soil (from "uniform incorporation of small of small amounts of powdered water-absorbing, gel-forming polymers" of col. 4 lines 32-41). Not disclosed is the material being a soil stabilizer. Green et al., however, discloses applying a soil stabilizer, anionic PAM, to the soil (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Hamilton Jr. by using PAM as the agent as disclosed by Green et al. so as to stabilize soil aggregation and flocculate suspended particles (see abstract of Green et al.) so as to stop erosion.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton Jr. (US 5,456,733) in view of Green et al. (Sustaining the Global Farm) in further view of Roberts et al. (US 5,725,630).

As to claim 15, the limitations of claim 1 are disclosed as described above. Not disclosed is the soil carrier being calcium oxide. Roberts et al., however, discloses the use of calcium oxide ("calcium silicate" of col. 3, lines 60-68). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Horne as modified Green et al. by using calcium oxide the carrier as disclosed by Roberts et al. depending upon use of the composition.

Claims 20-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hamilton Jr. (US 5,456,733; 6th document listed on Applicant's 1449) in view of Green et al. (Sustaining the Global Farm) in further view of Horne (US 2,765,291).

As to claims 20, Hamilton Jr. discloses a method of applying a material to the soil (from col. 4 lines 32-41 and col. 5 lines 43-46) comprising adding the material to the solid carrier (from col. 5 lines 43-46) that are pellets (col. 4 lines 5-42; col. 5 lines 53-46); applying the soil carrier to the soil (from col. 4 lines 35-41); applying water to the solid carrier (from "when wetted" of col. 4 lines 32-41); releasing the material out of the carrier and into the soil (from "disintegrate when wetted" of col. 4 lines 32-41); wherein the soil carrier is made by an agglomeration process, pressure (from ":water is extruded and lost during pelletization" of col. 4 lines 14-17); wherein application rates of the solid carrier to the soil is based on the desired amount of material to be metered to the soil (from "uniform incorporation of small of small amounts of powdered water-absorbing, gel-forming polymers" of col. 4 lines 32-41). Not disclosed is the material being a soil stabilizer and the carrier comprised of at least 25% particles in excess of 1mm in diameter. Green et al., however, discloses applying a soil stabilizer, PAM, to the soil (abstract); Horne discloses the solid carrier particles being in excess of 1 mm in diameter ("3/16 of inch" of col. 3 lines 5-11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Hamilton Jr. by using PAM as the agent as disclosed by Green et al. so as to stabilize soil aggregation and flocculate suspended particles (see abstract of Green et al.) so as to stop erosion and to have the particles in excess of 1 mm diameters so as to allow for easier handling.

As to claim 21, the limitations of claim 20 are disclosed as described above. Not disclosed is solid carrier containing mineral elements. Hamilton Jr. as modified by Green et al. and Horne further disclose the carrier containing mineral elements (from "nutrients" of col. 3 lines 34-43 of Hamilton Jr.). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Hamilton Jr. as modified by Green et al. and Horne by adding nutrients so as increase desired plant growth.

As to claim 22, Hamilton Jr. as modified by Green et al. and Horne further disclose the stabilizer holding the mineral elements in the soil (inherent).

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Horne (US 2,765,291) in view of Green et al. (Sustaining the Global Farm).

As to Claims 61, Horne discloses a method of applying a soil additive to the soil (col. 31 lines 5-50) comprising adding a soil additive to a solid carrier (carries is pumice, see col. 1 lines 28-73); applying the solid carrier to the soil (col. 1 lines 49-55; col. 3 lines 43-49); applying water to the solid carrier (col. 3 lines 51-68); leaching the soil additive out to the solid carrier into the soil (col. 3, lines 51-68); wherein application rate of the solid carrier to the soil is based on the desired amount of the soil stabilizer to be metered to the soil (from col. 1 lines 49-55, col. 2 lines 4-6); wherein the carrier is a fertilizer (in that pumice would contain some nutrients). Not disclosed is the soil additive being a soil stabilizer. Green et al., however, discloses the addition of a soil stabilizer, PAM anionic (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Horne by adding PAM to the soil as disclosed by Green et al. so as to stabilize soil aggregates as well as flocculate suspended particles (see abstract of Green et al.).

Response to Arguments

Applicant's arguments filed 7 June 2007 have been fully considered but they are not persuasive. Applicants' arguments are: pumice is not an agglomeration, is a particle size reduction, hence the claims do not read on Horne (Remarks page bottom of page 13) and, (2) since Horne is particle reduction and Hamilton Jr. is agglomeration, the two can not be combined (Remarks bottom of page 14).

As to arguments (1) and (2), the rejections have been changed so that Horne is not used as a reference.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sears (US 6,855,182 B2) discloses the use of a solid carrier with anionic PAM.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey L. Gellner
Primary Examiner
Art Unit 3643